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Supreme Court, U. S.
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IN THE

Supreme Court of The United States

No. . . . . .

OCTOBER TERM, 1980
WILLIAM LANE
PETITIONER
VS.
UNITED STATES OF AMERICA
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. The Defendant did not and could not make an informed, intelligent waiver of plain instructional error.

2. The trial court improperly coerced the jury in reaching its second verdict.

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(a) This Petitioner in the context of this case did not make an informed, knowing, intelligent and voluntary waiver of plain instructional error.

(b) In this context the trial court improperly coerced the jury during its recharge.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals, Fifth Circuit, entered in the above entitled case on the Court's opinion on August 28, 1980, which Judgment has become final since no Motion for Rehearing has been filed.

CITATION TO OPINIONS BELOW

The opinion of the United States Court of Appeals, the Fifth Circuit, was off the Summary Calendar and dated August 28, 1980, and is appended hereto as Appendix A.

JURISDICTION

The opinion of the United States Court of Appeals, for the Fifth Circuit, was entered on August 28, 1980. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1) and Supreme Court Rules 22.(2).

QUESTIONS PRESENTED

1. The Defendant did not and could not make an informed, intelligent waiver of plain instructional error.

2. The trial court improperly coerced the jury in reaching its second verdict.

STATEMENT OF THE CASE

Defendant, WILLIAM LANE, an ambulance company owner, was convicted in U. S. District Court on twenty nine (29) counts of alleged Medicare fraud and was sentenced to five (5) years imprisonment on each count of One (1) through Twenty Eight (28) with sentences to run concurrently and five (5) years imprisonment on count twenty nine (29) but it was probated for five (5) years.

At the end of a five day trial by jury, the trial court orally charged the jury but inadvertently omitted instructions on (a) the presumption of innocence, (b) definition of reasonable doubt and (c) that the indictment or formal charge is not evidence of guilt. Neither counsel was given a copy of the charge to follow the Court's instructions. Immediately after the charge the jury was withdrawn (12:23 P.M. on April 9, 1979) and at 2:40 P.M. the same day (2 hours and 17 minutes later) the jury reported in a note to the Court "We have reached a verdict". This coincidentally occurred just as the Court, who by now realized the instructional oversight, was walking to the Courtroom to talk to both counsel and the Petitioner about these omissions. At 2:45 P.M., April 9, 1979, the Court reconvened with counsel for both sides and the Petitioner, WILLIAM LANE, present but absent the Jury. The Court first advised that a mistake had been made by all parties, that he wanted everyone's agreement to bring back the jury and give them the omitted instructions

and to explain it was an oversight and had been agreed to by counsel and that they (jury) should receive the instructions before they give "us" a verdict. The Court stated further on six separate occasions in front of the Petitioner (and once before the jury) that he would not accept the jury's verdict until they had been properly instructed. The Court then reread the entire charge including those previously omitted and proposed bringing in the jury and stated he could not accept their verdict without the additional instructions. The Court asked the Petitioner to agree to proceed by recharging the jury but indicated the Defendant's alternative to that agreement to be a mistrial and to go through the trial again. Petitioner, through counsel, agreed to a recharge of the jury, which was done. The first verdict of the jury was ordered recorded and placed in a sealed envelope and ordered to be treated in camera in case either counsel needed it on appeal. It was opened on appeal by Order of the Court of Appeals and it revealed the jury had reached a unanimous verdict of guilty as to all counts.

Prior to recharging the jury, the trial court observed in their presence that the parties should not be put through this twice and the jury should not be occupied with having to hear it again if "we" can rectify this oversight by the Court. The Court further observed that he had been reversed on a charge that lasted about an hour and twenty minutes by leaving out one phrase which he did not really think made any difference but the Appellant Court did. He also observed that you can have a six weeks trial undone on account of one phrase. (See Appendix A, Page 18 for most of the Court's colloquy at this juncture.) The Petitioner did not object to the Court's observations and did agree that the explanation given regarding the over-

sight was complete. The Court was recharged to include the omitted instructions and twenty (27) seven minutes later returned a unanimous verdict of guilty, which was accepted by the Court. A rehearing was not sought.

REASONS FOR GRANTING THE WRIT

The below questions of error presented are fundamental to the Constitutional right of the Petitioner to a fair trial by Jury and the action of the Court of Appeals thereon in rejecting them so far departed from the accepted and usual course of judicial proceedings as to require review by the Supreme Court. The errors are:

(a) This Petitioner in the context of this case did not make an informed, knowing, intelligent and voluntary waiver of plain instructional error.

(b) In this context the trial court improperly coerced the jury during its recharge.

(RESTATED)

(a) This Pettioner in the context of this case did not make an informed, knowing, intelligent and voluntary waiver of plain instructional error.

It was plain error with constitutional dimensions for the trial court to omit the instruction on presumption of innocence and definition of reasonable doubt (Re Winship 397 U.S. 358; **Coffin vs. United States,** 156 U.S. 432; **Taylor vs. Kentucky** 98 S. Ct. 1930; **United States vs. Rodriguez** (Fifth Circuit) 585 F 2d 1243 and cases cited). The above case law indicated Petitioner was clearly entitled to a mistrial for such fundamental and *plain* error, (emphasis supplied). The important aspect of this waiver problem is whether the Petitioner can be said to have made an informed, intelligent, knowing and hence voluntary waiver when he did not know what rights he was waiving—that is, the fact that the jury involved

had already reached a unanimous finding of guilty. The Court of Appeals make much of the Petitioner's failure to object to the omission of the plain error instructions initially and the failure of counsel to ask the Court to review the contents of the jury's verdict. First, these were oral instructions consuming an estimated forty five minutes rendering it impossible to recall each and every required element of this charge and second, the Court stated seven times in open Court in the colloquy following the erroneous charge that he would not accept the verdict of the jury and finally ordered it sealed for use by counsel on appeal if they desired. In this context it would have been pointless to request the Court to open the verdict for all to see. Further, if what happened is viewed as plain error (Fed. Rules of Civil Procedure Rule 52(b)) failure to object to these faulty instructions and to ask to see the verdict is of no moment.

It is axiomatic that any Defendant may waive several fundamental rights by pleading guilty but such waiver hearing is usually attended by participation by the Defendant with all "cards on top of the table". Here the Petitioner neither participated in the waiver scene in this case but more importantly was unaware of what the jury's first verdict was which prevented him from making an intelligent, informed and voluntary decision (see Criminal Waiver: Requirement of Personal Participation, Competence and Legitimate State Interest, 54 California Law Review, 1262; Rule 11, Federal Rules of Criminal Procedure).

In the context of this case, a related, second fundamental question arises. Could this jury ever be rehabilitated by a new charge so as to accord this Petitioner his right to a trial by a jury and all that it connotes (Consti-

tutional Amendment No. VI). Can jurors who have already decided that the Defendant is guilty be chosen to sit? They can if the Defendant knows this fact and elects to waive any objection he might have. This is our case for Petitioner did not know what the first verdict was when he ostensibly waived any objection to have this Jury sit again. Ergo, his lack on an intelligent, informed and involuntary waiver).

(RESTATED)

(b) In this context the Trial Court improperly coerced the jury prior and during the recharge.

The question as to whether a Trial Judge's statements equate to coercion is determined from all the circumstances and in the context of that case (**Jenkins vs. United States** 85 S. Ct. 1059). The circumstances here that force the conclusion that coercion resulted from the Trial Court's colloquy are clear. First, the jury had already unanimously agreed that the Petitioner was guilty; second, the Trial Court was understandably distraught and chagrined over the prospect of five days of jury trial being forfeited because of any instructional oversight which he graphically portrayed in his remarks to the Jury re: cost, foolish errors, etc.; third, there was very little left for the imagination of the Jury as to what they were expected to do following the colloquy, and, fourth, it was a short step for the jury to reiterate what they had already done and return a unanimous verdict of guilty. In fact, it took but 27 minutes after recharge.

This case is not so much a case of an Allen (**Allen vs. United States,** 17 S. Ct. 154) coercion of a split vote jury, as it was to merely judicially encourage the Jury to return what they had already agreed. In the context of

this case it did not take a great deal to produce this result which clearly equates to coercion here.

Finally, this Petitioner has under these novel and burdensome facts, been denied a fair trial by a jury. It is true that he agreed to a recharge of this already committed jury but he did not know this and was in the reality of the moment not going to learn that. He was by the action of the Trial Court placed in a gambling posture. Should he demand a retrial or go for broke? Clearly, what should have done was for the Court to disclose the first verdict, eliminate unnecessary conjecture and allow decisions to be made on the basis of the facts that then existed. Denial of the facts voided the purported waiver as being uninformed and made it easy for coercion of this Jury. This case has resulted in a departure from the accepted and usual course of judicial proceedings.

CONCLUSION

For the foregoing reason, a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully Submitted:
BENBOW AND GROSS
111 West Laurel
San Antonio, Texas 78212
BY:

JOHN W. BENBOW
Attorney for Petitioner

September 16, 1980

CERTIFICATE OF SERVICE

I, JOHN W. BENBOW, a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 23rd day of September 1980, I served a copy of the foregoing Writ of Certiorari on the Respondent by depositing same in the United States Post Office with postage prepaid addressed to the following counsel of record at his post office address, to-wit: Solicitor General of the United States Department of Justice, Washington, D.C. 20530, Counsel for the Respondent.

JOHN W. BENBOW

APPENDIX A

UNITED STATES v. LANE

UNITED STATES of America, Plaintiff-Appellee,

v.

William LANE, Defendant-Appellant.

No. 79-5312

Summary Calendar*

United States Court of Appeals, Fifth Circuit.

Aug. 28, 1980

Circuit Judges.

PER CURIAM:

William Lane, owner and operator of Bexar ounty [Texas] Ambulance Service, was convicted at a jury trial on twenty-nine counts of violating 18 U.S.C. § 1001 by making, and causing his employees to make, false, fictitious, and fraudulent statements on forms requesting Medicare payments for ambulance services which appellant's firm had not rendered.[1] In appealing his conviction Lane contends that the district judge committed several reversible errors in his conduct of the trial. For those reasons discussed below, we affirm the appellant's conviction.

During 1975 and 1976 Lane operated the Bexar County Ambulance Service in San Antonio, Bexar County, Texas. Bexar Ambulance was in the business of furnishing ambulance services to the general public, including those citizens who were entitled to "Supplementary Medical Insurance Benefits for the Aged and Disabled," as part of the program known generally as "Medicare." The grand jury indictment in this case alleged that Lane had submitted twenty-nine false claims to the Group Medical and Surgical Service in Dallas, Texas (familiarly known as Blue Cross-Blue Shield of Texas),[2] for ambulance services which had not been rendered.

At trial Lane was portrayed as having engaged in a calculated practice of submitting falsified Medicare claims. Specifically, the Government's case indicated that Lane had given his firm's secretary and office manager a number of legitimate claims which Bexar County Ambulance had filed previously with Blue Cross-Blue Shield and instructed his employees to prepare new claim forms using information taken from the legitimate claims. The "trip" information on the forms included the patient's name and address, and the specifics concerning the ambulance services rendered (i.e., pickup location, reason why ambulance service was necessary, delivery location, mileage, etc.). The only information *not* transferred from the old claims to the new claims was the correct date which identified when the ambulance service was rendered. The date was changed on all twenty-nine claims. Then the altered claims were submitted to Blue Cross-Blue Shield of Texas for payment. This resulted in Medicare claims being filed with Blue Cross-Blue Shield for ambulance services allegedly provided on a particular date when stipulated documentary evidence at trial established that, in fact, the Medicare patients named on the claim forms could not have been transported by Bexar County Ambulance on the dates specified on the claims because they either had died before the date of transportation, had been hospitalized during the period that they were allegedly transported, or were already at the location to which they were allegedly transported.

At trial, after counsels' closing arguments were completed, the trial judge proceeded to charge the jury as to the law which it was to apply to the case. In what was an inadvertent omission, the trial judge skipped the first

several pages of his instructions to the jury. Included on the omitted pages were the general instruction on the role of the jury as the trier of fact, the need for the jury to follow the court's instructions on the law, its duty to base its decision on the testimony in evidence without prejudice or sympathy, and the definition of "reasonable doubt." Neither the judge nor counsel caught the omission at the time and shortly after noon the jury retired to begin its deliberations. Immediately following its retirement the jury decided to break for lunch.

During the lunch hour, some ten minutes after the charge had been given, it dawned on the trial judge that his charge to the jury might not have been complete. As most of the court's staff was at lunch as well, it took the trial judge some time before he could consult with the official court reporter to confirm his suspicion that indeed he had omitted several pages of jury instructions. In the meantime the jury had finished its lunch, had returned to the courthouse, and had begun its deliberations on Lane's case. Before the trial court could reconvene with all parties present, the trial judge received a note from the jury announcing that it had reached a verdict.

While the jury remained in the jury room, the trial judge explained to counsel and the defendant what had happened, or perhaps more precisely what had not happened. The trial court then stated that, due to the incomplete nature of the charge, it would not accept the jury's verdict. Furthermore, in discussing the predicament with counsel for both sides in open court, the trial judge offered the defendant/appellant his chice of one of three options: 1) The court would recharge the jury with only the instructions omitted from the first charge; or 2) the

court would recharge the jury with the complete charge, including the instructions which had been given and those which had been omitted; or 3) the court would declare a mistrial.[3]

The court allowed Lane and his attorney to confer privately in the back of the courtroom so that they could consider the options. After discussions with his attorney, Lane elected to have the court recharge the jury with the entire set of jury instructions which should have been given, but were not, the first time around. At no time during these proceedings did Lane or his attorney request that the jury's original verdict be disclosed.

At this point the jury was returned to the courtroom. The trial judge proceeded to explain to the jury what had occurred. At the conclusion of the explanation to the jury the trial judge asked counsel for both sides and the appellant himself if the explanation of the error had been satisfactory. Both counsel and Lane responded in the affirmative.

Immediately thereafter the trial judge proceeded to recharge the jury with the complete complement of instructions. However, with the agreement of counsel, the court added two instructions. The first was an instruction that upon returning to the jury room the jury should place the first unannounced verdict in an envelope, seal it, and have the foreman sign his name across the seal.[4] The trial court also instructed the jurors to "divorce your minds" from the first verdict and "to start your deliberations anew in the light of the Court's charge as you have just now received it." Both Lane's attorney and the prosecutor agreed that the trial judge's supplementary instructions were satisfactory.

Thereupon, the jury again retired to consider the guilt or innocence of Lane. Less than one-half hour later the court received a note that the jury had reached a verdict on its second retirement. Lane was found guilty on all twenty-nine counts.[5]

On appeal, Lane raises four points of error. First, he contends that the trial court committed reversible error in recharging the jury because his waiver of a mistrial was not made in an intelligent, knowing and voluntary manner. Second, Lane claims the trial judge's comments to the jury before the recharge improperly coerced the jury in reaching its second verdict of guilty. The third claim of error is that the trial court erred in permitting Government witnesses to render conclusions and opinions beyond their testimonial knowledge. Fourth, Lane contends the trial court erred in not giving the jury the exhibits introduced during trial until a short time before the jury reached its first verdict. We will address these claims in turn.

In charging the jury the first time, the trial judge failed to instruct the jury on the definition of reasonable doubt, the presumption of innocence and the statement that the indictment or formal charge is not evidence of guilt. Neither the court nor counsel immediately noticed the omission.

The principal issue presented by this appeal is whether the appellant, Lane, is entitled to a new trial even though the appelant agreed to have the trial court completely recharge the jury. Lane's position is that a new trial is required because his decision to waive any right he may have had to a mistrial was not made knowingly, voluntarily, and intelligently. Basically, Lane argues that be-

cause he did not know what the jury's first verdict was at the time he elected not to accept a mistrial, his waiver was not knowingly or intelligently made. In other words the trial judge should have declared a mistrial, and his failure to do so was plain error requiring a reversal. We disagree.

[1] Having conducted a thorough review of the record, our conclusion is that the appellant's decision to forego a mistrial and request that the trial judge recharge the jury with the complete set of instructions amounted to a knowing, voluntary, and intelligent waiver of any right Lane may have had to a mistrial. We are not persuaded by Lane's argument on appeal that his waiver of the mistrial could not have been intelligently made since he was not informed at that critical time of the jury's first verdict. As noted above, Lane never requested that the court open the jury's first verdict and reveal it to him. Indeed, at one point there was a suggestion by counsel for Lane that the verdict form should perhaps be "destroyed." We note that if the trial court and the appellant had been informed of the jury's first verdict of guilty, there would have been no real decision for Lane to make since his only practical option would have been to accept a mistrial.

The trial judge offered Lane the option of declaring a mistrial. After uninhibited consultation with his attorney, Lane made a conscious and entirely voluntary decision to decline the mistrial option and elected instead to recharge the jury. We find nothing wrong in permitting a defendant to consult with counsel of his own choice in making decisions which affect his substantial rights, however critical those decisions may be. Apparently, Lane's

decision to continue with the trial and recharge the jury must have been motivated by Lane's and his counsel's belief that he was going to obtain a favorable decision from that particular jury. Obviously, this strategic trial decision backfired. However, we do not think that this lost gamble amounts to an unintelligent and ineffective waiver of any of the defendant's substantial rights.

No miscarriage of justice occurred here. The appellant not only failed to object to the trial judge's first incomplete set of instructions and his proposed options for resolving the problem. Lane, after consultation with his attorney, specifically agreed that the court should charge the jury again with the complete set of instructions. The lower court's handling of this unusual situation certainly does not amount to error. Appellant's claim to the contrary is without merit.

[2] The appellant's second claim of error is his contention that the trial judge's explanation to the jury before the recharge improperly "coerced" the jury in reaching its second verdict of guilty. Before recharging the jury with the complete set of instructions, the trial judge explained to the jury why he had refused to accept its first verdict, why the parties had agreed that the jury should be recharged, and the need for the jurors to "unlock" their minds. This explanation was given when the jury was returned to the courtroom. Both counsel and the defendant agreed that the explanation was satisfactory.[4] Lane now contends that this explanation amounted to "plain error" in that the trial judge's comments "improperly coerced" the jury in reaching a verdict on its second retirement.

We do not think that the trial judge's explanation of

the unusual situation to the jury amounted to judicial coercion. Considering the unusual circumstances of this case, the explanation to the jury was necessary and reasonable. Both Lane and his attorney had the opportunity to object to the explanation as given, but chose not to do so. The explanation was not plain error.

[3] Lane's third point of error is that the trial court erred in allowing the Government prosecutor and several of the Government's witnesses to use the words "false claims" in describing the twenty-nine Medicare claims which were the subject of the indictment.

At trial, in order to aid the presentation of its case, the Government employed a chart which listed and described the twenty-nine claims. The words "false claims" appeared on the chart next to each of the listed twenty-nine Medicare claims. Lane's attorney objected to the Government's use of the word "false" on the chart, and the trial court gave the jury a limiting instruction.[7] In addition, at several points during the trial, the Government attorney and several witnesses for the prosecution referred to some of the data included on the Medicare claims at issue or the claims themselves as "false."

The appellant's substantial rights were not prejudiced by the occasional references made at trial that the twenty-nine Medicare claims in question were "false" in whole or in part. In fact, the trial judge sustained the appellant's objection and instructed the prosecution witnesses to refer to the claims as "alleged false claims." The appellant and the Government entered into a stipulation which acknowledged the falsity of the claims by establishing that on the date that the patients were allegedly transported they

either were dead, hospitalized, or already at the destination shown on the claim forms. This stipulation was read to the jury by the trial judge at the outset of the trial. In light of this stipulated evidence, the limiting instruction, and the trial court's direction to Government counsel that the Medicare claims be referred to as "alleged false claims," there is no error.

Finally, the appellant claims that he was prejudiced because the jury was not given the exhibits introduced during trial until several minutes before the jury reached its first unaccepted verdict. Before the jury had retired to begin its deliberations, counsel for both sides agreed which exhibits would be sent to the jury room for the jury's use during its deliberations. However, apparently due to the early return of the jury from lunch and its short deliberations before reaching the first verdict, the clerk of the court did not deliver the exhibits to the jury room until a few minutes before the jury concluded its first retirement.

Lane's attorney agreed to the court's suggestion that the exhibits would be delivered to the jury after lunch "on notice from the jury to the Marshal." The exhibits were at all times available to the jury at its request and indeed were delivered to the jury room before the jury completed its deliberations on its first retirement. We note that these exhibits had been extensively discussed before the jury during the course of the trial. Furthermore, the exhibits were available to the jury throughout the entire course of its deliberations during its second retirement. Lane's argument that the court erred in its handling of the exhibits is without merit.

AFFIRMED.

1. 18 U.S.C. § 1001 provides:
Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

2. Blue Cross-Blue Shield of Texas was an agent of the United States authorized to act as paying agent in the distribution of funds pursuant to claims submitted under the Medicare provisions of the Social Security Act. See 42 U.S.C. § 1395u.

3. In the words of the trial judge:

COURT: "I will not receive this verdict unless I give the additional charge, that's number one. I will not receive this verdict if counsel wants me to give the entire charge. I will give the entire charge. I will give the part that I left out or the entire charge or I will declare a mistrial, and he [the defendant] will have to go through the trial again."

4. On order of this court, the jury's sealed "first verdict" was unsealed, and it reflects that the jury had unanimously found Lane guilty on all counts.

5. The appellant was sentenced to five years' imprisonment on each count of count one through count twenty-eight of the indictment, said sentences to run concurrently. He also received a five-year sentence on count twenty-nine with this sentence to run consecutively to counts one through twenty-eight. However, this sentence was suspended and a five-year period of probation was imposed.

6. THE COURT: Ladies and gentlemen of the jury, I have something of a surprise for you in one sense. Shortly after you were retired, the Court, within ten minutes, realized that there had been an important matter left out of the Court's charge that had been given to you. But I had no way of being sure about it because I am going to give you the full explanation here for the benefit—I have already done this to counsel.

Now, counsel in the case have reached an agreement that I recharge you in full and direct you additionally. I don't know what your verdict is. We haven't asked you for it. It hasn't been received by the Court. All I have is your note here at 2:40 that you had reached a verdict. And so I'm going to have to tell you that you are going to have to unlock your minds about this verdict, whatever it is. And I am going to recharge you in full so that you will get the proper influence of the totality of the charge as a whole. Then I'm going to retire you to the jury room to consider your verdict.

So I'm going to now ask you to unlock your minds, and we are

going right back where we were before lunch, after the arguments of counsel had been finished. Do you understand?

I am now going to give the total charge to the jury and this is what you are to go by. And I will again retire you from the Courtroom, briefly, to allow them to make any objections again just in case I overlooked a page or two again. However, this time I'm going to provide each one of them with a copy of what they saw this morning so they can doublecheck the Court on it. It's just one of those things that happen, and I'm sorry that it takes up this much time. But the parties shouldn't be put through this twice and the jurors shouldn't be put through this twice, and the jurors shouldn't be occupied with having to hear it again, other jurors. We shouldn't have to go through this again if we can rectify this oversight by the Court.

So I'm going to—Marshal, go in there and get two copies. I happen to have two, I made two copies extra copies of it. I am going to have counsel, each one have a copy so even one word cannot be altered or changed. So you will just have to bear with me on this. This was the Court's fault, my oversight. It's the only way I can explain it to you. But after 15 years in the bench, you know instinctively sometimes that things hit your mind, this is one of the things that hit my mind. I couldn't get my people together to get an immediate correction.

I had a charge reversed one time on just one phrase out of a charge that lasted about an hour and twenty minutes. One phrase. I didn't think that a phrase really made any difference but the Appellate Court thought so. That was a reversal. So that's how meticulous, how careful the Court must be in the trial of these cases. You can do a six weeks trial and have it undone on account of one phrase. That's the way it ought to be. I don't find any fault with it. That's the reason you have appellate courts and reviewing courts. They review the trial court for error. If the trial court commits an error, that's why we have them to correct him so it won't happen again.

I will ask both counsel if the explanation of the error is satisfactory to both sides.

MR. JAHN (Assistant U. S. Attorney): Yes, sir.

MR. BENBOW (defense counsel): Yes, sir.

THE COURT: And the Defendant, you're agreeable to the explanation that I haven't left out anything.

THE DEFENDANT: Yes, Your Honor.

7. In this limiting instruction the lower court charged the jury that the Government's chart and summaries were merely aids to assist the jury in understanding the specifics of the Government's case. In the charge, the court emphasized several times that the chart was not evidence in and of itself. Furthermore, upon concluding its limiting instruction, the trial court specifically inquired whether defense counsel agreed with the instructions as given. Defense counsel voiced no objection to the trial judge's handling of the matter.